

Internal Revenue Service

Department of the Treasury

**District
Director**

1100 Commerce St., Dallas, Texas 75242

Date: APR 26 1993

Person to Contact:

Telephone Number:

Refer Reply To:

Dear Sir or Madam:

We have considered your application for recognition of exemption from Federal income tax under section 501(c)(3) of the Internal Revenue Code.

You were incorporated on [REDACTED] in the State of [REDACTED]. According to your Articles of Incorporation, your purposes are to prepare and distribute educational materials relating to computers; conduct research; foster the sharing of computer information; assist users of the [REDACTED] family of computer languages and related products in the use of such; encourage cooperation among users; foster channels of communication between users and vendors.

Your newsletters provide information on [REDACTED] and... . Your membership directory is a list of [REDACTED] users, so that members can locate people and facilitate the exchange of information between fellow users. It also lists corporate members with a listing of their products and services.

In your letter of [REDACTED] you explain that all manufacturers have a [REDACTED] type system and that [REDACTED] calls theirs [REDACTED], and the your organization was established to provide an educational and support mechanism to individuals and organizations interested in the [REDACTED] operating systems technologies. You advise that this operating system runs on many different computers from many different companies.

In an effort to deny that you are not promoting an [REDACTED] product, you advise that [REDACTED] have an agreement to pool technology to produce hardware and software from which all [REDACTED] companies would benefit. This consortium will be called the [REDACTED] and will consist of [REDACTED]'s [REDACTED] operating system with [REDACTED]'s interface. You emphasize that the [REDACTED] operating system is available for and runs on computers from multiple manufacturers, not only [REDACTED] hardware.

████████████████████
You state that although you use the trademark █████ in your name, you are not associated with █████.

Your newsletter states that your mission is to provide an environment where users can exchange information and ideas to maximize their investment in █████ systems. It refers to delivering input from █████ customers to █████. It states that █████'s customers have one of every kind of system, and they want the █████ to be the glue to tie them together. In your letter of █████, you state that the group is moving to the █████ environment described above as a consortium. There is no information on other manufacturers, except as a report on market share.

We had requested that you supply sample agendas for your meeting, but you stated they were unavailable. Originally, you supplied just one showing █████ representatives. Your brochure states that an advantage of membership is bimonthly meetings offering presentations from █████ support personnel, █████ software vendors and users. Three agendas submitted subsequently showed talks on █████ by other persons, not █████ personnel.

Your █████ newsletter states that the organization has affiliated with █████, another organization of users of █████ information systems. This will give members access to the process for submission to requirements to █████ concerning products, services and strategies.

Section 501(c) of the Code describes certain organizations exempt from Federal income tax under section 501(a) and reads, in part, as follows:

"(3) Corporations, *** fund, or foundation, organized and operated exclusively for religious, charitable, scientific, *** literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals, no part of the net earnings which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation (except as otherwise provided in subsection (h)), and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office."

[REDACTED]

Section 1.501(c)(3)-1 of the regulations provides, in part, as follows:

"(d)(1)(ii) An organization is not organized or operated exclusively for one or more of the purposes specified in subdivision (i) of this subparagraph unless it serves a public rather than a private interest. Thus, to meet the requirement of this subdivision, it is necessary for an organization to establish that it is not organized or operated for the benefit of private interests such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests."

Revenue Ruling 74-116, 1974-1 C.B. 127 describes an organization whose membership is limited to organizations that own, rent, or use a specific type of computer and whose activities are designed to keep members informed of current scientific and technical data of special interest to them as users of the computer, and states that the organization is not exempt under section 501(c)(3) of the Code.

Revenue Ruling 74-147, 1974-1 C.B. 136 describes an organization whose members represent diversified businesses that own, rent, or lease digital computers products by various manufacturers, organization to improve the efficiency of its members' use of computers, qualifies for exemption under code section 501(c)(6) of the Code.

On the basis of the information supplied, we have concluded that you are not operated exclusively for one or more purposes as specified in section 501(c)(3) of the Code. Although there is an educational aspect to your organization, the primary purpose is to supply a service to the users of [REDACTED] system. Although you are not legally supported by [REDACTED] with a contract or agreement, your purpose is to provide information and service to only one operating system, like the organization in Revenue Ruling 74-116. Although your membership is open to all, only persons with the [REDACTED] system would have reason to join.

You are not like the organization in Revenue Ruling 74-147, which provides information on all types of products by various manufacturers. Although this organization was exempt under section 501(c)(6) of the Code rather than 501(c)(3), we use this to illustrate the type of operation required to preclude private benefit.

[REDACTED]

The fact that your product is compatible with the equipment of many manufacturers does not change the fact that you are promoting a product. You are promoting [REDACTED]'s [REDACTED] operating system. The fact that [REDACTED] has entered into a consortium to further its marketing does not change the fact that the organization is promoting one type of operating system. You state all manufacturers have a [REDACTED] type system, but you are not providing educational information on [REDACTED]'s or [REDACTED]'s or any other manufacturers's system, only [REDACTED]'s. The fact that [REDACTED] is willing to license other manufacturers to use [REDACTED] serves to further confirm that it is an [REDACTED] trademarked and licensed product, and not a product of other manufacturers, as you claim.

Accordingly, it is held that you are not entitled to exemption from Federal income tax as an organization described in section 501(c)(3) of the Code, and you are required to file Federal income tax returns on Form 1120.

If you do not agree with these conclusions, you may, within 30 days from the date of this letter, file in duplicate a brief of the facts, law, and argument that clearly sets forth your position. If you desire an oral discussion of the issue, please indicate this in your protest. The enclosed Publication 892 gives instructions for filing a protest.

If you do not file a protest with this office within 30 days of the date of this report or letter, this proposed determination will become final.

If you do not protest this proposed determination in a timely manner, it will be considered by the Internal Revenue Code as a failure to exhaust available administrative remedies. Section 7426(c)(2) of the Internal Revenue Code provides in part that, "A declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the Court of Claims, or the district court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service."

If this determination letter becomes a final determination, we will notify the appropriate State Officials, as required by section 6104(c) of the Code, that based on the information we have, we are unable to recognize you as an organization of the type described in Code section 501(c)(3).